



Chapter Five

AGREEMENTS

BUREAU OF LOCAL ROADS AND STREETS MANUAL

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

Jan 2006

5(i)

Chapter Five
AGREEMENTS

Table of Contents

<u>Section</u>	<u>Page</u>
5-1 AGREEMENTS OF UNDERSTANDING.....	5-1(1)
5-1.01 Statutory Background	5-1(1)
5-1.02 Agreement Content	5-1(1)
5-1.03 Local Agency Responsibilities	5-1(2)
5-1.04 District Responsibilities.....	5-1(3)
5-1.05 Processing Agreements of Understanding	5-1(3)
5-2 JURISDICTIONAL TRANSFERS	5-2(1)
5-2.01 Jurisdictional Responsibility.....	5-2(1)
5-2.02 Jurisdictional Transfer Guidelines	5-2(1)
5-2.03 IDOT Responsibilities	5-2(2)
5-2.04 Processing of Jurisdictional Transfers.....	5-2(2)
5-2.05 Real Estate Transfers.....	5-2(3)
5-3 JOINT AGREEMENTS.....	5-3(1)
5-3.01 Joint Agreements Between State and Local Agencies.....	5-3(1)
5-3.01(a) Requirements for a Joint Agreement	5-3(1)
5-3.01(b) Agreement Content.....	5-3(1)
5-3.01(c) Draft Agreement.....	5-3(3)
5-3.01(d) Final Agreement.....	5-3(3)
5-3.02 Agreement for County Engineer's Salary	5-3(4)
5-3.03 Joint Agreements Between Local Agencies	5-3(4)
5-3.03(a) Guidelines for an Agreement	5-3(4)
5-3.03(b) Format.....	5-3(5)
5-3.03(c) Draft Agreement.....	5-3(5)
5-3.03(d) Signatures.....	5-3(5)
5-3.03(e) Distribution	5-3(5)
5-3.04 Interagency Cooperative Agreements	5-3(6)
5-4 LETTERS OF UNDERSTANDING/LETTERS OF INTENT.....	5-4(1)
5-5 ENGINEERING AGREEMENTS — MFT AND STATE FUNDS	5-5(1)
5-5.01 General.....	5-5(1)

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5(ii)

Jan 2006

5-5.02	Preliminary and Construction Engineering Agreements.....	5-5(1)
	5-5.02(a) Required Clauses	5-5(1)
	5-5.02(b) Standard Agreements	5-5(2)
5-5.03	Road District Engineering and Administration	5-5(2)
5-5.04	Maintenance Engineering	5-5(3)
	5-5.04(a) Preliminary Engineering.....	5-5(3)
	5-5.04(b) Engineering Inspection	5-5(4)
	5-5.04(c) Standard Agreement (Municipal Only)	5-5(4)
5-5.05	Inspection and Testing Services.....	5-5(4)
5-5.06	Method of Payment	5-5(5)
5-5.07	Local Agency Procurement Procedures for Consultant Engineering Services.....	5-5(9)
	5-5.07(a) Introduction	5-5(9)
	5-5.07(b) Applicability	5-5(9)
	5-5.07(c) Basic Steps for Selection	5-5(9)
5-6	ENGINEERING AGREEMENTS – FEDERAL FUNDS	5-6(1)
5-6.01	Standard Agreements.....	5-6(1)
	5-6.01(a) Form BLR 05610.....	5-6(1)
	5-6.01(b) Form BLR 05611.....	5-6(1)
	5-6.01(c) Form BLR 05612.....	5-6(2)
	5-6.01(d) Agreement Processing.....	5-6(2)
5-6.02	Selection of Consultants.....	5-6(3)
5-6.03	Administration of the Agreement	5-6(3)
	5-6.03(a) Project Administrator.....	5-6(3)
	5-6.03(b) Final Check	5-6(4)
	5-6.03(c) Project Closeout.....	5-6(4)
	5-6.03(d) Audits	5-6(5)
5-6.04	Supplements to the Agreements	5-6(5)
5-6.05	Evaluation.....	5-6(6)
5-7	RAILROAD AGREEMENTS.....	5-7(1)
5-7.01	Requirements for a Railroad Agreement.....	5-7(1)
5-7.02	Agreement Format.....	5-7(1)
5-7.03	Preparation and Execution	5-7(3)
5-7.04	Procedure for Joint State-Local Agency Railroad Agreements	5-7(3)
5-7.05	Compensation	5-7(4)
5-7.06	Illinois Commerce Commission	5-7(4)

BUREAU OF LOCAL ROADS & STREETS

Jan 2006

AGREEMENTS

5(iii)

5-7.06(a)	Illinois Commerce Commission Jurisdiction.....	5-7(4)
5-7.06(b)	General Procedures.....	5-7(4)
5-7.06(c)	Petition and Stipulated Agreements Guidance	5-7(4)
5-7.06(d)	Petition Procedures.....	5-7(6)
5-7.06(e)	Stipulated Agreement Procedures	5-7(7)
5-8	UTILITY AGREEMENTS.....	5-8(1)
5-8.01	Requirements for Utility Agreements.....	5-8(1)
5-8.02	Agreement Format.....	5-8(1)
5-8.03	Preparation and Execution	5-8(2)
5-9	MAINTENANCE AGREEMENTS FOR STATE HIGHWAYS	5-9(1)
5-9.01	Traffic Signal Master Agreements	5-9(1)
5-9.02	Maintenance Agreements.....	5-9(1)
5-10	TACO AGREEMENTS.....	5-10(1)

Chapter Five

AGREEMENTS

5-1 AGREEMENTS OF UNDERSTANDING

5-1.01 Statutory Background

Generally, highway construction by local highway authorities that is funded in whole or in part with Federal funds, State funds, and Motor Fuel Tax (MFT) funds, requires IDOT supervision and approval. However, the *Illinois Compiled Statutes* (605 ILCS 5/5-402 and 5/7-203.2) provides that counties and municipalities may enter into Agreements of Understanding (AOU) with IDOT to construct and/or maintain highways or streets using MFT funds, or other State funds administered under MFT policies and procedures, without the approval and supervision of IDOT. However, the local agency must show that it is adequately organized, staffed, equipped, and financed to discharge satisfactorily the requirements and duties of the *ILCS*. Agencies must also have an appointed full-time engineer. The district will determine if the local agency has met these requirements.

Conversely, road construction projects that are funded entirely by a county (i.e., do not receive any State or Federal financing) may be performed under the supervision and approval of IDOT at the option of the county.

5-1.02 Agreement Content

Agreements of Understanding (AOU) between IDOT and a local agency are typically used for maintenance and construction, or maintenance only. Counties may include work done by road districts under the supervision of the county engineer. IDOT and the local agency must prepare the terms of the agreement to ensure that funds are expended consistent with the intent of the law. The following stipulations should be included in the agreement:

- The responsibilities of the local agency and IDOT must be listed.
- In the event that a vacancy occurs in the local agency's position responsible for overseeing expenditure of MFT funds (e.g., county engineer, city/public engineer), the AOU will be temporarily suspended.
- IDOT may make periodic inspection of the jobsite and project files, as it deems necessary, to satisfy itself that the work is being done in compliance with the plans, specifications, and IDOT policies and procedures.
- The agreement must state what work is covered by the agreement.
- The provisions of the agreement do not apply to any Federal- or State-funded projects that are not administered under the MFT policies and procedures.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-1(2)

Jan 2006

- The agreement can be discontinued at the discretion of either party.
- The use of MFT funds, other than specified in the agreement, will require approval by IDOT.
- The provisions of the agreement may be tailored to the local agency.

5-1.03 Local Agency Responsibilities

The local agency is responsible for the following items and any other items that are pertinent to providing a clear understanding between the parties in the agreement:

1. To maintain an adequate, fully staffed organization and to keep IDOT advised of the organization and key staffing changes.
2. To develop a coordinated long-range transportation plan for construction and maintenance, in accordance with the 605 ILCS 5/5-301 and 5/7-301.
3. To follow the procedures set forth in the *ILCS* (i.e., Sections 605 ILCS 5/5-403 and 5/6-701.3 for counties and Section 605 ILCS 5/7-203 for municipalities) for maintenance and construction of any highway or street.
4. To use the design criteria and to follow the policies and procedures adopted by the Bureau of Local Roads and Streets. Modifications and deviations must be approved by IDOT.
5. For construction projects, to ensure that all plans and specifications are prepared by an Illinois licensed professional engineer or by individuals under the direct supervision of an Illinois licensed professional engineer. All plans are required to have an engineer's professional and structural seal and signature, as applicable.
6. For counties to obtain the Bureau of Bridges and Structures approval for all preliminary bridge design and hydraulic reports, and all final bridge plans for bridges and culverts having a clear span of more than 30 ft (9 m) (605 ILCS 5/5-205.1).
7. To obtain all necessary environmental clearances and construction permits before advertising a project for letting or constructing the project with its own forces.
8. Securing all right-of-way prior to advertising a project for letting, unless prior approval by IDOT has been secured.
9. To obtain IDOT's approval of plans and specifications for improvements or connections to State highways and/or appurtenances prior to advertising for bids. The local agency is responsible for withholding the final payment to the contractor until written certification is received by IDOT that the project has been completed according to the plans and specifications and that the work itself is acceptable to IDOT.

BUREAU OF LOCAL ROADS & STREETS

Jan 2006

AGREEMENTS

5-1(3)

10. To advertise for bids using IDOT's Notice to Contractor Bulletin and to let contracts for maintenance or construction to the lowest responsible bidder, or to do the work itself through its officers, agents, or employees.
11. To perform, or have someone else perform, construction and material inspections required for its construction and maintenance projects using procedures in accordance with the *IDOT's Project Procedure Guide*.
12. To make available, upon request, all records for review and/or audit by IDOT. These documents must be retained for a minimum of 5 years after the work has been completed. Agencies operating under AOU are required to supply IDOT, if applicable to the project, with one copy of the various documents for record purposes as specified in the AOU.
13. To obtain IDOT approval for any use of MFT funds, other than those specified in the agreement.
14. To request IDOT's authorization of MFT funds on a timely basis.
15. To submit an annual report to the district listing the projects undertaken, the funds expended, and the projects' status.
16. To furnish the district all documents required by the AOU.

5-1.04 District Responsibilities

The district is responsible for the following items and any other items that are pertinent to providing a clear understanding between the parties in the agreement:

- to authorize MFT funds when requested by the local agency,
- to provide a general review of the local agency's operation under the AOU, and
- to perform an annual audit of MFT accounts.

5-1.05 Processing Agreements of Understanding

A local agency desiring to be placed under an AOU or desiring additional information about an AOU should contact the district. Sample agreements are available from the district. If the district determines that a local agency is qualified to be placed under an AOU, the agreement must be executed by the local agency and Central BLRS.

5-2 JURISDICTIONAL TRANSFERS

5-2.01 Jurisdictional Responsibility

Jurisdiction is the authority and obligation to administer, control, construct, maintain, and operate a highway subject to the provisions of Section 605 ILCS 5. See Section 3-2 for a discussion on jurisdiction.

When an agency has jurisdiction of a highway, it has various obligations that include reconstruction, signing, maintenance, etc. All of these obligations remain with the agency until the jurisdiction is transferred to another entity. Transfer of the maintenance or any other portion of jurisdiction is not allowed. For example, a county can enter into an agreement to have another agency perform maintenance on a section of highway; however, this does not relieve the county from the ultimate obligation of ensuring that the maintenance is performed. The reason is that the county has merely entered into an agreement for the performance of services and not an agreement for the transfer of jurisdiction. In other words, a maintenance agreement does not transfer jurisdiction.

A jurisdictional transfer will occur because it is either (1) mandatory or (2) agreed to as prescribed by Section 605 ILCS 5. A municipality annexing territory is mandated to assume jurisdiction of a township/road district highway within the annexed territory. Agreed-to jurisdictional transfers occur because of the logical need to transfer authority to another highway system. For example, relocating an existing State highway may result in decreased traffic occurring on the old State highway. Therefore, the old State highway may be better served under the jurisdiction of a county, municipality, or township/district road system.

It should also be noted that transfer of jurisdiction in itself does not involve transfer of ownership of the land. A separate process involving title work must be performed; see Section 5-2.05.

5-2.02 Jurisdictional Transfer Guidelines

Section 605 ILCS 5/4-409 authorizes IDOT to enter into a written contract with any other highway authority for the jurisdiction of any highway or section of highway. IDOT may also, upon application of any highway authority, authorize the highway authority to enter into a written contract with any other highway authority for the jurisdiction of any highway or section of highway. IDOT is therefore required to be a party to all agreements involving the transfer of jurisdiction of a highway from one highway authority to another. If the transfer involves the State highway system, IDOT is one of the executors of the agreement. If the transfer is between two local agencies, IDOT is required to approve the transfer of jurisdiction.

All transfers of jurisdiction are accomplished in accordance with the BLRS publication, *Jurisdictional Transfer Guidelines for Highways and Street Systems*. This document is available on IDOT's website. Although the *Jurisdictional Transfer Guidelines* should be used as a general guide, each transfer will need to be evaluated on a case-by-case basis.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-2(2)

Jan 2006

5-2.03 IDOT Responsibilities

Jurisdictional transfers mandated by the *ILCS* do not require IDOT approval. Other jurisdictional transfers will require IDOT approval.

The Central BLRS is responsible for maintaining records of all jurisdictional transfers.

The Highway Systems Manager in the Central BLRS serves as the clearinghouse for all jurisdictional matters. In this capacity, the manager maintains documentation of all highway jurisdictional matters and reviews all documents requiring IDOT approval or clarification.

5-2.04 Processing of Jurisdictional Transfers

Central BLRS must be notified of all jurisdictional transfers. These transfers include both the mandated and agreed-to types. The district and the local agency are responsible for notifying Central BLRS of a jurisdictional transfer. Draft agreements for proposed jurisdictional transfers should be submitted to the Central BLRS for review prior to execution by the local agency(ies). The jurisdictional transfer agreements should contain the following items and any other items pertinent to providing a clear understanding between the parties in the transfer is submitted:

1. Conveyor/Recipient. The document should clearly indicate the highway authority conveying and the highway authority receiving the segment of highway involved.
2. Location Description. Provide a clear description of the highway and the beginning and ending points involved in the transfer. Use route numbers and local highway names. Include Federal route numbers when available.
3. Length. Accurately measure the length of highway to be transferred to the nearest hundredth of a mile (hundredth of a kilometer).
4. Structures. Indicate and identify all structures to either be included or excluded in the transfer by their structure number. Any structure not excluded is considered a part of the jurisdictional transfer.
5. Illinois Statutes. The jurisdictional transfer should identify the *Illinois Compiled Statutes* that authorizes the legality of the transfer.
6. Other Information. Include any additional information that may assist in identifying the transfer. Jurisdictional transfers involving an improvement should include the applicable project number, State section number, local agency section number, contract number, etc.
7. Location Map. Include a map (minimum 8½" x 11" (216 mm x 279 mm)) to provide the location of the affected highway involved. The map should be legible and indicate the limits of the portion of highway to be transferred.

BUREAU OF LOCAL ROADS & STREETS

Jan 2006

AGREEMENTS

5-2(3)

8. Resolutions and Ordinances. The *Illinois Compiled Statutes* require that a resolution from the county and ordinance from the municipality be executed for an agreed-to jurisdictional transfer.
9. Effective Date of Jurisdictional Transfer. Clearly define the date and method by which a jurisdictional transfer will take place.

Forms BLR 05210, BLR 05211, and/or BLR 05212 may be used for processing the transfer. It is recommended that a draft agreement be submitted for review. Submit one original signature document of the final agreement to the district for each agency involved in the transfer.

5-2.05 Real Estate Transfers

Section 605 ILCS 5/4-508 allows for the conveyance of any real estate interest from the State to another highway authority in conjunction with a past or present transfer of jurisdiction. The conveyance of any real estate interest from the State to another highway authority is not mandatory and must be mutually agreeable to both parties. Therefore, the State can transfer jurisdiction to another highway authority without the conveyance of any real estate interest. This conveyance can be part of the jurisdictional master agreement. For conveyance of land associated with a highway in which the jurisdiction has been previously transferred, a Letter of Intent between IDOT and the local agency is prepared to initiate the transfer; see Section 5-4. After concurrence of the concerned parties, a plat and legal description of the property to be transferred is prepared. If the transfer material is acceptable, the local agency must pass and execute the appropriate ordinances/resolutions to accept the transfer and submit five certified copies to the district. The transfer is then approved by the Secretary of Transportation.

No part of the transferred land can be vacated or disposed of without the approval of IDOT that may require compensation for non-public use.

For additional guidance on real estate transfers, see the *IDOT Land Acquisition Policies and Procedures Manual*.

5-3 JOINT AGREEMENTS

5-3.01 Joint Agreements Between State and Local Agencies

5-3.01(a) Requirements for a Joint Agreement

IDOT may enter into a joint agreement for maintenance, engineering, administration, or improvement of a highway with any other highway agency. A local-State agreement is required when local agencies are involved in projects that are financed in part with State and/or Federal funds. A joint agreement is required for a project when one or more of the following conditions apply:

- The project involves planned improvements on the local highway system for which construction, engineering, utility relocation, and/or right-of-way acquisition will be paid totally, or in part, with State or Federal funds.
- The project involves planned improvements on the State highway system for which the local agency is participating in the cost and/or any subsequent maintenance thereof on any phase of the improvement or in energy and/or maintenance costs of traffic signals or street lighting. If a highway is constructed to a greater width or of a different type than is required by IDOT, the local agency will be responsible for the excess cost (605 ILCS 5/4-404).
- The project involves planned improvements on the State or local highway system involving a jurisdictional transfer between the State and the local agency.

5-3.01(b) Agreement Content

For most projects involving Federal-aid and/or State funds, standard agreement forms (BLR 05310 or BLR 05311) should be used. These forms cannot be used if there are three or more parties to the agreement. Multiple parties may be included on standard agreements if one agency is designated as the lead agency. All transactions with IDOT will be with the lead agency. An Intergovernmental Agreement (IGA) should be prepared to specify payment and other responsibilities between the lead and additional local agencies.

If an individual joint agreement is required to be written, the agreement must clearly identify the responsibilities of each party. The agreement should incorporate the following items and any other items pertinent to providing a clear understanding between the parties relative to the project:

- Include the local agency name, MFT section number for each agency that is a party to the agreement, Federal project number (for Federal-aid projects), and State job number.
- Provide a description of the work to be accomplished.
- Include a location description and location map.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-3(2)

Jan 2006

- Identify who is responsible for the surveys, plan preparation, letting and awarding of the contract, and construction supervision of the work.
- Specify the method of construction (e.g., State-let contract, local-let contract, local agency day-labor forces).
- Note if a separate concurrence in the award of the contract is required.
- Separate the division of cost by showing the funding responsibilities and the type of funds being used. Clearly identify any limiting amounts. Attach any supporting documentation (e.g., resolutions).
- Identify the method of payment and/or reimbursement by each party.
- Identify the specific Disadvantaged Business Enterprise (DBE) program being followed by the local agency.
- Identify who is responsible for any utility adjustments and disposition of encroachments.
- Note any parking restriction applicable to the project.
- Specify jurisdiction of the facility, both before and after construction.
- Specify who is responsible for maintenance after the project is completed.
- Specify who is responsible for maintenance and energy costs for traffic signals and/or street lighting.
- If a transfer of jurisdiction is involved, identify limits of the roadway included in the jurisdictional transfer and attach all necessary transfer documents in accordance with the BLRS publication, *Jurisdictional Transfer Guidelines for Highway and Street Systems*.
- Identify who is responsible for record retention during and after the project completion.
- Note the agreement expiration date and any other special conditions.

When the local agency desires to use one or more lump-sum amounts before the Federal percentage is calculated, specify the order in which it should be used and the “not to exceed” amount. The following provides an example of the wording that should be used on BLR 05310 with regards to State Match or other funds:

- *Lump-sum \$60,000 TARP funds not to exceed 50% of final cost of project credited to the project to be utilized first.*
- *Lump-sum to be utilized second not to exceed \$20,000 EDP funds.*
- *Lump-sum to be utilized third not to exceed \$40,000 State Match funds.*

These specified amounts will be used in sequence, with the Federal and local percentages calculated after they are deducted.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

Jan 2006

5-3(3)

When the local agency desires to use a percent “not to exceed” commitment, the Federal and State funds will be used concurrently at the specified percentages up to the “not to exceed” amount (e.g., 20% not to exceed \$40,000 State Match Funds).

Be advised that the “not to exceed” amount specified under a percentage commitment will be tied up and unavailable for programming until the project is closed out and audited by IDOT or FHWA, if required.

5-3.01(c) Draft Agreement

Draft joint agreements should be prepared for all projects. They are to be reviewed by both the district and Central BLRS for those projects involving special funding or conditions that are not adequately addressed in the standard agreement format. The purpose of this review is to ensure that the improvement is compatible with the State highway system, the work is included in the State’s Annual Construction Program, and right-of-way and other provisions in the proposed agreement are adequate to permit Federal and/or State participation in the project. Comments and recommendations on the draft agreement will be provided for incorporation into the final agreement.

5-3.01(d) Final Agreement

A minimum of three copies of the agreement, with original signatures by the appropriate local agency official(s), must be furnished to the district. Provide one additional copy with original signatures for each local agency that is a party to the agreement.

If the improvement is on the State highway system, the joint agreement will be processed through BDE unless the project is being funded with Federal-aid funds allocated for improvements selected by local agencies. Agreements for these projects, as well as improvements on the local highway system, will be processed through BLRS.

There may be special cases where these procedures will need to be modified. Contact the appropriate bureau office for guidance.

The agreements should be signed by the chairman of the county board, mayor, or village president. If the agreement is signed by an appointed local official, the local official signing the agreement must be authorized to do so by resolution of the local governing body. This resolution should also be on file in the district office.

Since the highway commissioner has jurisdiction of its highways, the highway commissioner must also approve the expenditure of township road district funds, and the construction, repair, and maintenance of township roads within the road district.

A copy of the executed agreement is furnished to the local agency upon execution by IDOT. Copies are also sent to the district and all bureaus and agencies affected by the project.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-3(4)

Jan 2006

5-3.01(e) Amendment to Federal-Aid Agreement

If a revision to the Division of Cost of the original joint agreement (BLR 05310) or any subsequent amendments is required, the local agency should use BLR 05311. BLR 05310 was not designed to function as an amendatory document.

All requirements of Section 5-3.01(c) and 5-3.01(d) should be addressed.

5-3.02 Agreement for County Engineer's Salary

When a county elects to transfer part of its Surface Transportation Program (STP) funds to IDOT in return for State funds to be used to pay a portion of its county engineer's salary, a joint agreement is needed. BLR 09220 can be used for this type of agreement.

This agreement will remain in force and effect for a period of 6 years from the date of execution unless terminated by either party upon 30 days' written notification by either party. The agreement will be temporarily suspended during any period for which the county does not have sufficient STP funds available to be transferred.

5-3.03 Joint Agreements Between Local Agencies

605 ILCS 5/4-409 allows IDOT to authorize a highway authority to enter into a contract with another highway authority for the jurisdiction, maintenance, administration, engineering, or improvement of any highway.

5-3.03(a) Guidelines for an Agreement

When two local agencies are jointly constructing a highway improvement, a joint agreement between the local agencies is always advisable. In some circumstances, IDOT requires this joint agreement to be submitted for approval. In all other cases, one copy of an executed joint agreement should be submitted to IDOT for informational purposes. A joint agreement is required for a project when any of the following conditions apply:

- A municipality proposes to improve a municipal street extension that extends into another municipality (605 ILCS 5/7-202.3).
- A county proposes to improve a street (not a county highway) within a municipality with a population exceeding 500 persons to connect or complete a county highway within a municipality (605 ILCS 5/5-408).
- A municipality and a township propose a joint improvement (65 ILCS 5/11-85).
- A county elects to surrender its jurisdiction over the right-of-way and improvement of a county highway (65 ILCS 5/11-91.2 and 605 ILCS 5/5-410.1).

BUREAU OF LOCAL ROADS & STREETS

Jan 2006

AGREEMENTS

5-3(5)

- When a county(ies) deems it necessary to make improvements of county line roads (605 ILCS 5/5-405) or to make improvements with adjacent counties (605 ILCS 5/5-406,407).
- Local agencies in adjacent States.
- When a municipality maintains a county highway within a municipality (605 ILCS 5/5-410).

5-3.03(b) Format

Clearly identify the responsibilities of each party. Address in the agreement any applicable items listed in Section 5-3.01(b). Also, address in the agreement any additional items that might be pertinent to ensure a clear understanding between the agencies executing the agreement.

5-3.03(c) Draft Agreement

Furnish a draft copy of the joint agreement to the district for review and comment if IDOT approval of the agreement is required. The purpose of this review is to ensure that the agreement is compatible with statutory requirements.

5-3.03(d) Signatures

The agreement should be signed by the chairman of the county board, mayor or village president, or highway commissioner, as appropriate. If an appointed local official signs the agreement, then the official must be authorized to do so by resolution of the local governing body. This resolution should also be on file in the district.

5-3.03(e) Distribution

When IDOT approval of the joint agreement is required, a minimum of four copies of the agreement, with original signatures by the appropriate local agency official(s), must be furnished to the district. Provide additional copies with original signatures if more than two local agencies are a party to the agreement.

A copy of the executed agreement is furnished to each local agency upon approval by IDOT. Copies are also furnished to the Central BLRS and all agencies affected by the project. When IDOT requires copies of the agreement for informational purposes only one copy of the executed agreement needs to be provided to the district.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-3(6)

Jan 2006

5-3.04 Interagency Cooperative Agreements

The *Intergovernmental Agency Act* (5 ILCS 220) allows any power, privilege, function, or authority that may be exercised by a public agency to be exercised, combined, transferred, or exercised jointly with another public agency. These contracts must be approved by the governing bodies of each participating agency. These agreements should reflect a sustaining working relationship between the agencies. It should emphasize the mutual benefits and costs and should not focus on one particular project. When the agreement involves functions that affect roads and streets, the agreement should be sent to IDOT for review.

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5-4 LETTERS OF UNDERSTANDING/LETTERS OF INTENT

State improvements that do not involve local financial participation may at times be covered by Letters of Understanding. The Letter of Understanding can also cover local improvements with no State or Federal participation. A Letter of Understanding may be used to delineate maintenance responsibilities (e.g., parking lanes, curbs and gutter flags, sidewalks, manholes, catch basins, storm sewers, traffic signals, utilities, appurtenances). Many of the provisions typically included in a Joint Agreement of Understanding should also be included in a Letter of Understanding (e.g., ordinances for sewer, parking, and encroachments; provisions for curb ramps and plan approval).

The district will prepare the Letter of Understanding. Include in the Letter of Understanding a brief description of the proposed project and describe the responsibilities of both parties. The Letter of Understanding will be signed by the Regional Engineer, and transmitted to the local agency for the local official's signature.

5-5 ENGINEERING AGREEMENTS — MFT AND STATE FUNDS

5-5.01 General

Local agencies may enter into an agreement with licensed professional engineers (holding a current license to practice engineering in the State of Illinois) to provide engineering services financed in whole or part with Motor Fuel Tax (MFT) or Township Bridge Program (TBP) funds. It is illegal for a county to enter into a contract with a member of an engineering firm if the county engineer is also a member of that engineering firm.

Any unit of local government of fewer than 3,000,000 inhabitants, except home rule units (50 ILCS 510/3), is required to negotiate and enter into contracts for architectural, engineering, and land surveying services on the basis of demonstrated competence and qualifications for the type of services required at fair and reasonable compensation (50 ILCS 510).

Procedures for public notice, selection, and contract negotiations as set forth in the State *Statutes* and must be used whenever a project requiring architectural, engineering, or land surveying services is proposed for a political subdivision unless the political subdivision has a satisfactory relationship for services with one or more firms (50 ILCS 510/4 – 510/8). See Section 5-5.07.

MFT or TBP funds will be limited to the amount of compensation called for in the agreement. These funds cannot be expended for payment of engineering services until an agreement has been submitted to, and approved by, the district. Any percentage fee should be fully supported by an acceptable estimate of man-hours, anticipated hourly payroll rates by classification of employee for the project, and applicable overhead and burden rates. These rates should be evaluated and, if determined to be acceptable, the percentage fee may be approved by the district.

5-5.02 Preliminary and Construction Engineering Agreements

5-5.02(a) Required Clauses

Include the following clauses in all engineering agreements for preliminary and/or construction engineering:

1. Services. Define the services to be performed.
2. Contract Length. Identify the section or time period, not to exceed 3 years, covered by the agreement.
3. Compensation. Include the amount and type of compensation to be paid to the consultant. Where the major portion of services is to be provided on a cost-plus basis, provide a list of personnel by occupational title or professional class and the rate of pay for each. If the principal engineer or other consultant's employee perform routine services (e.g., field material inspection, detailed inspection, standard design, drafting

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-5(2)

Jul 2006

work) that could be performed by lesser salaried personnel, the wage rate billed directly for these services cannot exceed those rates paid to the consultant's salaried personnel performing the same or similar work.

4. Payment. Identify the time schedule at which payments are to be made.
5. Non-discrimination. Include the standard clauses for non-discrimination and fair employment practices.
6. Retainage. Retainage may be held for engineering agreements at the option of the local agency. Counties, however, are required by 605 ILCS 5/5-409 to include a retainage clause for construction engineering.

5-5.02(b) Standard Agreements

BLRS has developed standard agreement forms that can be used by the local agency and the engineer and are available on the IDOT website. It is not required that any specific agreement use the standard agreement forms. If the BLR form is used, it must be used verbatim. If the form is modified, the IDOT logo, form number, and any other department identifier must be removed. The following forms are provided by the BLRS:

- Form BLR 05510 – Preliminary Engineering Services Agreement for Motor Fuel Tax Funds.
- Form BLR 05511 – Preliminary Engineering and Construction Guidance Agreement for MFT Funds.
- Form BLR 05512 – Preliminary Engineering and Construction Engineering Services Agreement for MFT Funds.

5-5.03 Road District Engineering and Administration

605 ILCS 5/6-701.3 allows for a county engineer to be paid administrative and engineering costs for road district MFT construction and maintenance. Engineering and administrative work may be performed on either an actual cost or a fixed-percentage basis, or a combination of these methods. The following will apply:

1. Work Force. This work may be done by one, or an approved combination, of the following:
 - a. by the county with its own forces, with payments to be made directly from MFT funds on an actual cost basis;
 - b. by the county with its own forces, with payments to be made on a percentage basis, as determined and agreed on by and between the county and the road district and approved by IDOT; and/or

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

Jul 2006

5-5(3) |

- c. by a consulting engineer under agreement with the county and approved by IDOT
2. Resolution. The county board will adopt a resolution informing IDOT of the method or methods it proposes to use. The resolution must include the following:
 - a. Identify the method or methods of performing the work and the program(s) to which it is applicable (e.g., MFT Construction, MFT Maintenance, Township Bridge Program).
 - b. If Method 1.b. above is employed, include the rate of compensation to be applied to each application.
 - c. Provide the effective date of the resolution.
 - d. Note the supercedence of any preceding resolution.
3. Approval. Submit two copies of the resolution to the Regional Engineer for approval.
4. Renewal. Annual formal agreements are required for road district maintenance where the county is not performing the engineering services with its own forces; see Section 5-5.04.

5-5.04 Maintenance Engineering

Local agencies may enter into an agreement with licensed professional engineers to provide engineering services for maintenance work funded in whole or in part with MFT funds. Formal agreements may include preliminary engineering and/or engineering inspection.

5-5.04(a) Preliminary Engineering

Typically, the engineer is responsible for the following duties during preliminary engineering:

- investigation of the condition of the streets;
- determination, in consultation with the local officials, of the maintenance operations to be included in the maintenance program;
- preparation of the maintenance resolution, estimate, and proposal;
- attendance at meetings of the governing body as may reasonably be required;
- attendance at the public letting and preparation of the contract or acceptance of proposal forms; and
- preparation of the maintenance expenditure statement.

5-5.04(b) Engineering Inspection

For engineering inspection projects, the engineer is normally responsible for the following:

- furnishing the engineering field supervision of maintenance operations requiring professional on-site inspection;
- checking materials invoices for payment; and/or
- preparing the payment estimate for contract maintenance, including any necessary changes-in-plans, and providing a final estimate of the contract maintenance cost.

5-5.04(c) Standard Agreement (Municipal Only)

Form BLR 05520 may be used for preliminary engineering and/or engineering inspection agreements. The agreement requires the signature and seal of the licensed professional engineer and the signature and title of the local official. Attach the formal agreement to the maintenance papers submitted to the district for approval showing the estimated cost of maintenance and the operations requiring engineering inspection.

5-5.05 Inspection and Testing Services

Local agencies may enter into an agreement with a licensed professional engineer holding a current license or a testing company authorized to do business in the State of Illinois as a "Testing Laboratory" to provide inspection services for projects financed in whole or in part with MFT funds. Formal agreements may include the following:

1. Scope of Services. This may include:
 - a. obtaining samples for inspection,
 - b. material testing,
 - c. reporting results,
 - d. obtaining material certification, and/or
 - e. providing proof that the materials concerned meet the requirements of the appropriate specifications.

This work should be performed in accordance with IDOT's *Project Procedure Guide* and with IDOT's QC/QA Program, where applicable.

2. Time of Services. Identify the project basis and the period of time for the agreement, not to exceed three years. Note that Section 65 ILCS 5/8-1-7 limits the term of professional contracts to a term not to exceed the remaining term of the mayor or village president.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

Jul 2006

5-5(5)

3. Method of Measurement. The method of measurement will be based on the services to be performed. Methods of measurement will be in accordance with standard test methods, IDOT's *Manual of Test Procedures for Materials*, and good engineering practices. Pay rates may be based on units of measurement. The following are some units that may be used:
- a. plant proportioning control, ton or yd³ (metric ton or m³);
 - b. in-place density determination, hourly rate;
 - c. flexural strength tests, each;
 - d. Marshall tests, each;
 - e. mix design, each;
 - f. core drilling, ft (m);
 - g. soil reports, per hour laboratory time;
 - h. structural steel shop inspection and testing, hourly rate.

Costs will be assigned to the MFT project for which the testing is being done.

5-5.06 Method of Payment

5-5.06(a) Compensation Formulas

The engineering agreement will be negotiated based on one of the following methods of compensation:

1. Specific Rate. Used only for small contracts less than \$100,000 and where the work can be clearly defined (e.g., testing). The sum includes payroll, overhead, and profit only.
2. Cost-Plus-a-Fixed-Fee Amount (CPFF). Actual cost plus a net fee compensation is used when the estimate of the work, labor, and other expenses required for its execution cannot be accurately estimated by local agency personnel in advance.

The costs are:

- direct salary cost, which is the salary expense for professional and technical personnel and principals for time that they are productively engaged in work necessary to fulfill the terms of the agreement;
- direct non-salary costs incurred in fulfilling the terms of the agreement;
- the consultant's overhead cost (including payroll additives); and
- the fixed-fee amount, which represents the consultant's profit (14.5%) and other miscellaneous amounts that may be considered under applicable regulations and are not paid for elsewhere. The fixed-fee may be renegotiated when significant changes in the scope, complexity, character, or duration of work are warranted.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-5(6)

Jul 2006

The consultant may select from the following three formulas when negotiating a CPFF amount:

- a) CPFF Formula 1. $CPFF = 14.5\%[DL + R(DL) + OH(DL) + DC]$.
- b) CPFF Formula 2. $CPFF = 14.5\%[DL + R(DL) + 1.4(DL) + DC]$.
- c) CPFF Formula 3. $CPFF = 14.5\%[(2.3 + R)DL + DC]$. (The 2.3 payroll multiplier in Formula 3 includes a 130% overhead rate.)

Where:

DL = Direct Labor
DC = In-house Direct Costs
OH = Actual Overhead Factor for Consultant
R = Complexity Factor

Profit or fixed fees for consultant services for construction engineering may not exceed 15% of anticipated construction costs.

3. Direct Labor Multiple (DLM). The DLM method of compensation allows every consultant a different percentage of profit depending on the level of a firm's overhead. The DLM formula is:

$$DLM = [(2.80 + R) \times DL] + DC$$

4. Lump Sum. Lump-sum method of compensation may be used for MFT-funded projects under \$10,000.
5. Actual Costs. The actual costs of services plus a specified percentage for overhead,
6. Base Fees. The base fees plus percentage fees not to exceed acceptable fees that are shown in Figure 5-5A,

If Method 4 or 5 is used, the total engineering cost cannot exceed the amount determined under Method 6.

Preliminary engineering fees for maintenance are applied to the total approved estimated cost of each maintenance operation included in the maintenance estimate except maintenance engineering. The engineering inspection fee is applied to the final cost of those maintenance operations inspected by the engineer. If retainage is used, 10% of the total fee is withheld until the final cost of inspected items is known and the final payment estimate and/or final papers and the maintenance expenditure statement have been submitted.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

Jul 2006

5-5(7)

BASE FEE		
Programs ≤ \$15,000 Negotiated Base Fee (\$1,000 Maximum)		Programs > \$15,000 \$1,000
PLUS		
Group	Preliminary Engineering (Acceptable Fee (%))	Engineering Inspection (Acceptable Fee (%))
I	N/A	N/A
II	2%	N/A
III	4%	4%
IV	5%	6%

Notes:

Group I. Non-engineering items; materials or services purchased without a proposal (e.g., electrical energy, expendable small tools).

Group II. Routine day labor maintenance items (e.g., street sweeping, tree trimming or removal, mowing, ice and snow control, cleaning ditches, brush removal, traffic signal maintenance, lighting maintenance, purchases by a proposal of materials not directly incorporated into the work). Items requiring minimum preliminary engineering and no engineering inspection.

Group III. Day labor maintenance items requiring material proposal. Items furnished and spread or delivered to jobsite by material suppliers. Items requiring preliminary engineering and/or engineering inspection.

Group IV. Contract maintenance items performed by contractor. Items requiring preliminary engineering and/or engineering inspection.

FEE FOR MAINTENANCE ENGINEERING

Figure 5-5A

Engineering fees for road district maintenance are based on the final maintenance cost.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-5(8)

Jul 2006

5-5.06(b) Efficiency Factor.

The consultant may also opt to include an efficiency factor. When provided in an agreement, the consultant has the opportunity to share in any direct labor cost savings achieved by the efficiencies of the consultant from the original direct labor estimate. Upon submission and approval of the final bill, when the negotiated direct labor cost upper limits is not reached, the consultant will be entitled to 1% of the remaining funds. The efficiency factor is applied as follows:

- A. DLM. The local agency negotiates man-hours and the upper limit of compensation. When the actual payroll multiplied by the multiplier (i.e., $2.80 + R$) is less than the negotiated payroll multiplied by the specified multiplier, the consultant is entitled to 1% of the difference. When the final bill is submitted and approved, the local agency requests the consultant to submit a bill for 1% of the remaining funds when the direct labor upper limit is not reached.
- B. CPFF. An efficiency factor may also be applied to those contracts using the cost plus fixed fee method. When the contract's direct labor cost upper limit is not reached, the consultant will receive 1% of the difference between negotiated and actual direct labor plus overhead.

Either of the two compensation methods may be selected by the local agency. The selected method must be indicated prior to soliciting prospective consulting firms.

5-5.06(c) Complexity Factor.

Figure 5-6B presents a description for the various levels on the complexity of work.

R Value	Complexity of Work
CPFF – 0.0 DLM – 0.0	Low complexity projects that involve such work as project surveys, routine drafting functions, minor simple span bridges, small rural projects, project reports, and simple environmental assessments.
CPFF – 0.035 DLM – 0.003	Complex jobs that involve such work as small urban projects, freeway interchanges, projects on new alignment, freeways, multi-span continuous bridges, complex environmental assessments, and design reports.
CPFF – 0.070 DLM – 0.008	Very complex work that involves such work as multi-level interchanges, movable bridges, complex major bridges, major urban freeways, complex design reports, environmental impact statements, and major engineering studies requiring special expertise.

COMPLEXITY FACTOR

Figure 5-5B

5-5.07 Local Agency Procurement Procedures for Consultant Engineering Services

5-5.07(a) Introduction

The purpose of this procurement procedure is to provide guidelines for the selection of a consulting engineering firm and the conduct of the negotiations leading to an agreement for its services. Specific steps are necessary to carry out the selection process as required by Section 50 ILCS 510. The area and magnitude of responsibility in the process can vary widely according to project type.

The principal objective of these procedures is to allow a local agency to locate consulting engineers who are qualified to undertake the project; then, through negotiations, engage the firm that will provide the creative and technical work required at a fair and reasonable cost. The selection of consultants by the competitive bidding process is prohibited by law.

5-5.07(b) Applicability

The procurement procedures in Section 5-5.07(c) apply to the selection of all consulting engineers for engineering services except for home rule units and government units with more than 3,000,000 inhabitants.

5-5.07(c) Basic Steps for Selection

The procedure for procurement consists of the following four basic steps:

1. Step 1 – Define the Project. Clearly define the scope of the services desired. Depending on the amount of data, this may be on one or more pages. This information should include the following:
 - describe in general terms the need, purpose, and objective of the project;
 - identify the various project components;
 - establish the desired timetable for the effort;
 - identify any expected problems; and
 - determine the total project budget.

A comprehensive evaluation of the problem or need that resulted in the project is essential to the procurement process. The solution, approach, and, eventually, design for the project will evolve out of the expertise offered by the firm responding to the request for technical proposals. To ensure that the respondents address the project properly and effectively, clearly articulate all known parameters of the project.

After defining the project, local agencies maintaining a satisfactory working relationship with a qualified firm may skip Steps 2 and 3 and proceed directly to Step 4.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-5(10)

Jul 2006

2. Step 2 – Identify Potential Firms. Consider the following sources when preparing a list of potential firms:

- identification of prequalified firms from the local agency's or IDOT's file;
- a directory or source list identifying small, minority, and women's businesses with capabilities relevant to the project;
- discussions with other persons or agencies who have accomplished similar work;
- lists of firm names secured from professional societies; and/or
- lists of firm names secured from the agency's own experience of designated firms.

Mail a letter requesting consultant interest to potential firms identified above or place an advertisement in a local newspaper requesting a statement of interest along with the qualifications and performance data from firms.

3. Step 3 – Determine the Firm that Best Fits the Project's Needs. The first objective of evaluation is the elimination of all respondents who are not qualified or who do not have the experience for the required work. After interviewing separately with a minimum of three firms, rate them according to qualification and preference to establish a 1-2-3 ranking. Typical criteria for both evaluating and ranking firms are included in Figure 5-5C. In geographic areas where the availability of qualified firms is lacking, the minimum number of three qualified firms to be ranked may be waived.

4. Step 4 – Discuss the Scope of the Project and Negotiate Agreement Terms with the Selected Firm. Meet with the number one ranked firm to clarify the scope of the project in more detail. At this time, it is appropriate to ask for a fee schedule and estimate to be included in the agreement. This step will involve the following:

- a. Identify the Scope of the Project. An important objective of the negotiation process is to reach a complete and mutual understanding of the scope of professional services to be provided and the degree of performance desired. The general scope of professional services developed in the procurement process should be broad in order to serve as the basis for negotiation. The negotiation process offers the opportunity for refinement, amendment, and complete definition of the services to be rendered, as well as the areas of responsibility and liability for those services. Mutual understanding on these points at the negotiation stage can minimize the possibility of misunderstanding as the project progresses.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

Jul 2006

5-5(11)

Typical criteria for both evaluating and ranking firms should include but not be limited to the following:

1. The education, experience, and expertise of the firm's principals and key employees.
2. The firm's general experience, stability, and history of performance on projects similar to the one under consideration.
3. Availability of adequate personnel, equipment, and facilities to do the required work expeditiously.
4. The name, or names, of individuals in the firm who will be assigned key project responsibilities, with particular attention to their qualification, competence, and past performance.
5. The firm's approach to the planning, organizing, and management of a project effort, including communication procedures, approach to problem solving, data gathering methods, evaluation techniques, and similar factors.
6. Facilities and equipment owned by the firm, including computer capability, reproduction and communication equipment, laboratory and testing equipment, or other specialized equipment applicable to the project under consideration.
7. Present workload with attention to current and future commitments of available personnel, particularly those key persons expected to be assigned to your project.
8. Financial stability, with particular attention to avoiding a situation in which the firm is solely dependent on income from the project at hand for its existence.
9. Recommendations and opinions of each firm's previous clients as to its ability to meet deadlines and remain within budget. Prior clients may also be able to advise you as to each firm's sense of responsibility; attitudes of key personnel; concern for economy, efficiency, and environment; and quality of service.
10. If practical, observation of each firm's facility and the sites of current and/or completed projects.
11. Proximity of the engineering firm to the proposed project site and/or the agency's office.
12. The reputation and integrity of the engineering firm within the professional field and the community.
13. Awards received by the firm and technical papers authored by employees.
14. Special considerations for some projects might include staff conversant in foreign languages and qualified minority representation.
15. The local agency has worked with a specific firm and can cite any or all of the following advantages:
 - a. The firm's personnel are acquainted with the agency's organization and local conditions.
 - b. Information from the files of past assignments is of great importance.
 - c. Compatibility with agency organization is assured.
 - d. A smooth start-up and satisfactory progress will result because both parties will be dealing with known factors.
16. The weight given each evaluation criterion in the ranking process may vary from project to project. For example, criterion "6" would be more heavily weighted than criterion "11" if the bulk of the project tasks involve computer analysis and design. However, the reverse would be true for a project with an extensive construction oversight provision.

CONSULTANT RANKING CRITERIA

Figure 5-5C

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-5(12)

Jul 2006

Special elements of the engineering portion of the project to be established during negotiation include:

- project schedule,
- manpower requirement and timing,
- level of engineering effort,
- avenues of research, and
- areas of responsibility/liability.

- b. Negotiate Agreement Terms. Contracts between local agencies and consulting engineers must be set forth in fully executed agreements. If there is an agreement with the engineering firm, and if the fee is within range of the budget, proceed to finalize an agreement. If problems arise with the scope of the project or the fee, further discussion and clarification may be required.

Selection of a firm by qualification provides no guarantee that the local agency and the firm can come to an agreeable fee. For that reason, the 1-2-3 ranking process provides, in addition to the first preference, at least two alternative qualified firms. If agreement cannot be reached on the scope and fee, the local agency may drop negotiations with the top-ranked firm and continue the process with the second firm at Step 4.

Continue until an agreement has been mutually reached. Generally, agencies reach this accord with the first or second firm.

5. Summary. Ranking and negotiations involve a considerable amount of subjective judgment. Because engineering projects involve a large expenditure of public funds, accountability for decisions and value judgments is most important. To ensure adequate accountability:

- Involve more than one knowledgeable person in the evaluation process.
- Be consistent in reviewing each applicant.
- Keep accurate and complete records of all correspondence, memoranda, evaluations, and decisions.

The primary purpose of undertaking the negotiation process for selection is to locate the most qualified firm to do the work and negotiate a fair and equitable agreement. Illinois law prohibits the selection of consultants by the competitive bidding process. Make the selection based on the firm's experience and expertise in projects of the same type as proposed.

5-6 ENGINEERING AGREEMENTS – FEDERAL FUNDS

If desired, local agencies may secure Federal participation in the costs of preliminary and construction engineering for Federally funded improvements, provided that approval from IDOT is secured and the procurement procedures of Section 5-5.07 are observed. Arrangement by local agencies with consulting engineers and engineering firms, covering engineering services, will be set forth in fully executed agreements or contracts. The procedure for the selection and hiring of consultants is subject IDOT approval. Engineering work cannot begin until it has been authorized by FHWA and the engineering agreement has been approved by IDOT.

5-6.01 Standard Agreements

For projects where Federal participation in engineering will be requested, standard agreement forms have been prepared for preliminary engineering (BLR 05610) and construction engineering (BLR 05611).

The local agency should, if practical, use the standard consultant agreements listed above. Note that separate engineering agreements are required for preliminary and construction engineering services.

5-6.01(a) Form BLR 05610

Preliminary engineering is divided into two phases. Phase I includes preparation of the environment documents, project development or design report, bridge condition reports, and preliminary bridge design and hydraulic report (with TS&L as required). Phase II includes preparation of the plans, specifications, and estimates. The work covered by the Phase II agreement cannot begin until Phase I has been completed and design approval has been given by IDOT.

The preliminary engineering agreement form provides for compensating the consultant for all work based on methods of payment outlined in Section 5-6.01(c). The agreement must contain a maximum amount payable which cannot be exceeded without modification of the agreement.

5-6.01(b) Form BLR 05611

Construction engineering by the consultant does not include being the resident engineer. The resident engineer in charge of the construction must be a public employee. The construction engineering performed by the consultant is to be confined to staking, inspection, material testing, measurement, and compilation of quantities.

The construction engineering form provides compensation to the consultant including:

- the actual costs related to salaries of its employees, including any salary costs for furnishing the employees (e.g., overhead cost, administrative costs);

BUREAU OF LOCAL ROADS & STREETS

5-6(2)

AGREEMENTS

Jul 2006

- any direct non-salary cost incurred by the engineer (e.g., travel costs, meals, lodging); and
- a fixed fee for profit, provided the total fee does not exceed the stipulated total maximum amount payable.

5-6.01(c) Form BLR 05612

Construction engineering to be provided by a local agency requires central office approval. The department is required to pre-audit all projects receiving federal funding in accordance with applicable federal regulations. Construction engineering and resident engineering services to be accomplished by a local agency utilizing federal funds are required to be submitted to the Central BLRS for a pre-audit review and approval. Any services performed prior to the approval from the department may jeopardize the eligibility of federal funding reimbursement. Any invoices submitted for reimbursement for services performed by a local agency will not be processed for payment until a request for a pre-audit and approval is submitted to the Central BLRS.

5-6.01(d) Agreement Processing

When preparing these agreements, consider the following:

1. Negotiations. The local agency may notify the consultant of its selection and invite the firm to submit a proposal. Furnish the consultant with a detailed job description and an itemized breakdown of work. The consultant's method of dividing the project into work units and calculating related time units are to be such that the estimate can be readily reviewed. The consulting firm will use its own estimates of man-hours, rates of pay, overhead, profit, and itemized non-salary costs based on the firm's work force and past job experience.

When the prime consultant requires the services of another consultant to provide expertise, advice, or information to the prime consultant, the prime consultant will complete an analysis of fee for engineering services; including a breakdown of direct salary and direct non-salary costs.

The consultant is responsible for ensuring that DBEs will have an equitable opportunity to compete for subcontracts. See Section 24-2 for information on DBEs for local agencies.

2. Method of Payment. The compensation method selected for the prime consultant is to be used by any subconsultants with the exception of construction engineering agreements when a specific rate is allowed for testing services. The consultant will be informed that an agreement will be negotiated based on specific methods described in Section 5-5.06. Federally funded engineering projects are limited to specific rate, cost plus fixed fee (CPFF), and lump sum methods of compensation. .

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

Jul 2006

5-6(3) |

5. Review. Before an agreement is approved, it will be reviewed by the IDOT Bureau of Accounting and Auditing to ensure that the payroll rates are acceptable. Records of the consultant firm will be reviewed to establish an approved overhead rate if one has not already been established.

5-6.02 Selection of Consultants

The local agency's staff or consultant selection group should select a consultant according to the provisions of Section 5-5.07 and forward the following documentation to the district:

- the names of the consultants considered who provide professional services for the type of work considered, and
- some detail as to the method of consideration (e.g., by phone, letter, personal interview, personal knowledge of consultant qualifications, consultant brochures).

For Federal-aid projects, home rule units and government units with more than 3,000,000 inhabitants must comply with one of the following:

- procedures established within Section 5-5.07;
- procedures established by Title IX of the *Federal Property and Administrative Services Act* of 1949, commonly known as the *Brooks Act*, or
- their own qualification-based procedures that are in compliance with 50 ILCS 510/1 – 510/8 and have been approved by the Central BLRS.

5-6.03 Administration of the Agreement

5-6.03(a) Project Administrator

The local agency is responsible for assigning one of its personnel as project administrator to work with the consultant. The project administrator will conduct the following:

- Prepare supplements and letter supplements to existing consultant agreements for additional services or services beyond the scope of the work of the original agreement, and include the local agency's estimate of the costs for the work involved.
- Ensure that no work is done or costs incurred until the agreement and supplements are approved by the approving authority and executed by the proper parties and the work is authorized by the FHWA.
- Perform as liaison between the local agency and the consultant to ensure compliance with the terms of the agreement and with regard to the work performed by the consultant.
- Monitor the consulting firm's progress reports to ensure that problem areas are reported and corrective action is taken.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-6(4)

Jul 2006

- Establish controls to monitor time for completion of each agreement to ensure that the time limitations are not exceeded.
- Ensure the accuracy of bills presented by the consultant and submit the bills to the district for reimbursement.
- Maintain cumulative cost records for each agreement.
- Establish controls to prevent payment in excess of contract limitations.
- Monitor the consulting firm to ensure compliance with any and all Equal Employment Opportunity provisions of the agreement.

5-6.03(b) Final Check

Upon completion of the work under the consultant agreement, the local agency will ensure that all terms and conditions of the agreement have been complied with and that all services to be performed under the agreement have been completed prior to final release of the consultant.

The agreement will be terminated in writing by the local agency. A copy of any termination should be sent to the district.

5-6.03(c) Project Closeout

The local agency is responsible for ensuring that all terms and conditions of the engineering agreement have been fulfilled and that all services to be performed under the agreement have been completed. The following apply:

1. Final Invoice. The local agency will submit to IDOT a final invoice for the agreed lump-sum payment or the remaining costs incurred, in accordance with the approved agreement and any supplements. Submit this invoice within 90 days following IDOT approval of the PS&E.
2. Documentation. Include documentation to support invoiced engineering costs in all invoice submissions (e.g., itemized cost lists, time cards, payroll ledgers, related bills, cancelled checks). Retain copies of all invoices and supporting documentation for auditing purposes for a period of 3 years after payment of the final voucher.
3. State Job Completion Notice (Form AA-336). Upon receipt of the final invoice, the district will prepare Form AA-336 to notify the appropriate office of the project completion.
4. Audits. IDOT will audit invoices in accordance with FHWA approved auditing procedures. Upon completion of the audit and resolution of any findings, IDOT will close out the Contract Obligation Document and submit a final voucher to FHWA. See Section 5-6.03(d).

BUREAU OF LOCAL ROADS & STREETS

Jul 2006

AGREEMENTS

5-6(5)

5. Form BLR 13510. When MFT or TBP Funds are used to pay a portion of the cost, submit Form BLR 13510 upon completion of the project. This will close out the MFT or TBP.
6. Form BLR 05613. The prime consultant shall complete this form and submit to the District BLRS at the conclusion of the contract. The District BLRS will submit this form to the Central BLRS along with the final invoice.

5-6.03(d) Audits

Agreement administration will be audited by IDOT's Bureau of Accounting and Auditing under the "Single Audit Agreement." IDOT's "Memorandum of Understanding, Current Billing, and Concurrent Audit Program" will be used in the fiscal control of projects between the State and FHWA. Guidelines for the performance of audit evaluation will be adhered to as set forth in "Procedure for Audit Assurance of Cost Estimates in Excess of \$50,000."

5-6.04 Supplements to the Agreements

When the consultant is requested to complete work outside the scope of the original agreement, the local agency must provide a written supplement to the original agreement. This may be done by a letter supplement. The local agency should, where applicable:

- Review the original agreement prior to negotiation of any proposed supplemental agreement.
- Provide a statement to the district explaining the reasons that the original agreement will be supplemented to add/change/amend conditions.
- Describe the scope of work in sufficient detail to clearly outline the additional work that the consultant is to do.
- Include the mode of payment (e.g., cost plus a net fee, specified hourly rate, daily rate, any indirect cost). This mode of payment must be the same as the original agreement. Always include a maximum amount payable.
- Specify a time for beginning and completion of the contract. Be specific (e.g., calendar days, specified day of the year).
- Specify if subletting is authorized; if so, specify to whom, for what, and the amount payable.
- Attach, as exhibits, a finance summary of estimated costs of the supplement(s). Include only the costs to be incurred by the additional scope of work.
- Provide spaces for the consultant and the local agency to sign the letter supplement. Ensure that both parties to the agreement have the authority to act. The supplement will require IDOT approval.

5-6.05 Evaluation

The local agency's project administrator is responsible for evaluating the consultant's performance. Figure 5-5C contains typical criteria for evaluating firms. Upon completion of the evaluation, send a copy of the results to the district and place a copy in the local agency's file for consideration when a consultant is to be hired for future work.

5-7 RAILROAD AGREEMENTS

As changes take place on the railroads and local highway systems, there will be a need for crossing improvements, structure replacements, or the elimination of a crossing. Before these actions can take place, an agreement must be in place that describes the scope of work, the responsibilities of the parties involved, and the method(s) of payment.

For both upgrades to existing crossings and the construction of new crossings, contact the railroad early in the process of planning and design. Long approval times are typical for any work within railroad right-of-way.

5-7.01 Requirements for a Railroad Agreement

A railroad agreement is required where:

- there are proposed joint improvements between railroad(s) and road districts, municipalities, or counties involving changes in a railroad grade separation structure or grade crossing, including changes in protection that will be paid totally or in part with MFT, State, or Federal funds;
- there are improvements on the local highway system that require a relocation or removal of the railroad facilities; and/or
- if there is a change in circuitry and/or traffic signal preemption.

A separate railroad agreement is not normally required when the Illinois Commerce Commission (ICC) issues an order or develops a stipulated agreement. See Section 5-7.06 covering the improvements listed above. A supplemental agreement will be required if the ICC order does not cover all of the Federal requirements or fund types.

5-7.02 Agreement Format

In the agreement, specify the responsibilities of each party. The agreement should contain the following items plus any additional items applicable to the project:

1. Identify the railroad name, local agency name, and MFT section number, if applicable. For Federal-aid projects, also identify the project and job number.
2. Include a description of the work to be done.
3. Provide a location description and location map. Include the AAR DOT number and the railroad milepost.
4. For projects with Federal funds, include a statement that the project is subject to FHWA requirements.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-7(2)

Jan 2005

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5. Identify who is responsible for the surveys, plan preparation, specifications, and estimates.
 6. Include the responsibilities for special signal and pavement markings at railroad crossings.
 7. Identify which agency is responsible for letting and awarding the contract and who will provide construction supervision of the work.
 8. Identify the selected method of construction (e.g., State- or local-let contract, railroad or local forces).
 9. Note if concurrence in the award of the contract is required.
 10. Provide a division of cost showing funding responsibilities and the type of funds being used.
 11. Identify the method of payment and/or reimbursement by each party.
 12. Note the local agency appropriation for their share of the cost.
 13. For Federally-funded projects, include any statements regarding DBEs. Note the DBE program being followed by the local agency if it is a locally-let contract.
 14. Identify who is responsible for railroad adjustments and the salvage of old equipment.
 15. Identify who is responsible for maintenance of the completed work (e.g., crossing surfaces, warning signals, power lines, roadway approaches).
 16. If protection work is involved, the agreement must stipulate that the work conforms to the ICC *Requirements for Railroad-Highway Grade Crossing Protection* and to the *Illinois Manual on Uniform Traffic Control Devices*.
 17. Note who is responsible for the retention of records for inspections, audits, etc. Railroads must retain records for 3 years after completion of the project.
 18. Identify the proposed completion date of the project.
 19. Provide provisions in the agreement to allow termination of the project.
 20. Include a statement that IDOT audits railroad bills for work performed by railroad forces in accordance with FHWA requirements on all projects involving the use of State or Federal funds.

5-7.03 Preparation and Execution

Typically, the local agency or the local agency's consultant will prepare the railroad-local agency agreement. At the request of a local agency, the Central BLRS can provide assistance to the local agency during the agreement preparation process. The draft agreement is circulated among the affected parties and is sent to the district, the local agency, the railroad, and the Central BLRS for corrections/comments. Once corrected, the agreement is executed by all parties.

Upon review of the draft agreement by IDOT, the local agency arranges with the railroad to have an estimate of cost and plans submitted to the district for approval prior to execution of the agreement.

A minimum of three copies of the agreement should be provided with original signatures by the appropriate parties. Additional copies should be included with original signatures, if more than one local agency and/or railroad is a party to the agreement.

The agreement should be signed by the authorized local agency and company representative. Normally, the local agency representative is the chairman of the county board, highway commissioner, mayor, or village president. In the case of a county or municipality, if another local official signs the agreement, the official must be authorized to do so by resolution of the county board, city council, or village board. The railroad representative who signs the agreement is usually the company president, general manager, or chief engineer. IDOT approval of the executed agreement must be secured prior to authorizing the railroad company to proceed with the work.

Railroad agreements involving MFT funds require the approval of the district.

For guidance on coordinating with railroads, see Section 10-2.01.

5-7.04 Procedure for Joint State-Local Agency Railroad Agreements

For joint State-local agency improvements involving railroad crossing work where the construction contract will be awarded by the State, negotiations with the railroad may be handled by IDOT or the local agency as provided in the joint agreement. If the joint agreement makes no provisions for railroad negotiations, the development of agreements and negotiations with railroad companies will be handled by the local agency. For railroad work to be performed in conjunction with a Federal-aid highway improvement, FHWA requirements and/or the provisions of Chapter 7 of the *BDE Manual* will apply. When the plans are prepared by the local agency, a plan and profile of the highway adjacent to the railroad crossing is submitted to IDOT by the local agency before negotiations are started. When the local agency will award the contract for joint improvements, all negotiations with the railroad are handled by the local agency and the required documents are secured by the local agency.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-7(4)

Jan 2005

5-7.05 Compensation

Compensation for railroad work is normally based on an actual cost basis. A lump-sum agreement can be used for routine rail crossing safety improvements (e.g., warning devices, crossing surfaces). Under a lump-sum agreement, actual cost records and an audit will only be made to evaluate actual project costs in order to accurately negotiate future lump-sum contracts.

5-7.06 Illinois Commerce Commission

5-7.06(a) Illinois Commerce Commission Jurisdiction

Rail carriers (railroads) are corporations engaged in the transportation of passengers and/or goods for hire in the State of Illinois, as defined in the *Illinois Compiled Statutes* (625 ILCS 5/18c), and come under the jurisdiction of the Illinois Commerce Commission (ICC). The *ILCS* states, in part:

No public road, highway, or street shall hereafter be constructed across the track of any rail carrier at grade, nor shall the track of any rail carrier be constructed across a public road, highway, or street at grade, without having first secured the permission of the Commission;

The Commission's rules, regulations, and requirements cover the construction, maintenance, division of cost, marking, and signaling of highway and railroad crossings in the State of Illinois.

5-7.06(b) General Procedures

When the ICC is involved in a highway-railroad improvement, the ICC will either approve a stipulated agreement with the railroad and local agency, then issue an ICC order, or issue an order after a petition has been filed, and a public hearing has been held.

Section 5-7.06(c) defines when a petition is required and when a stipulated agreement may be used. Petition and stipulated agreement procedures are discussed in Sections 5-7.06(d) and 5-7.06(e), respectively.

5-7.06(c) Petition and Stipulated Agreements Guidance

1. Petition. In certain instances, a petition followed by a hearing with the ICC is required. The following are cases in which a petition is required:
 - the establishment of a new public at-grade railroad crossing,
 - the elimination of any existing public at-grade crossing or grade-separated structure,

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

Jan 2006

5-7(5)

-
- new construction of any grade-separated structure with a cost greater than \$1,000,000,
 - the installation of automatic warning devices at a crossing with less than two trains per day, and
 - where a crossing does not meet the minimum stipulated agreement criteria for signal improvements or one of the parties involved is unwilling to execute a stipulated agreement.
2. Stipulated Agreements. Stipulated agreements are generally used under the following conditions:
- a. Automatic Flashing Light Signals (AFLS) with Gates. AFLS with gates may be recommended by the stipulated agreement procedure when any of the following conditions are met or exceeded unless a diagnostic team finds automatic flashing lights signals and gates are not warranted and recommends the installation of an alternative active/passive warning device:
 - the product of the seasonally adjusted average daily traffic count and the average daily train movements exceeds 3,000 for the mainline or branch line tracks having two or more train movements daily;
 - the clearing sight or stopping sight distances for normal highway conditions, for actual rail and vehicular traffic speeds are restricted and the product of trains per day times vehicles per day exceeds 1,000;
 - there is an unusual highway or track geometric or vehicle/train operation that creates a hazardous condition that cannot be reasonably improved by other means; or
 - a diagnostic team recommends the improvement.
 - b. Other. The stipulated agreement procedure may also be used for the following conditions:
 - reconstruction or minor relocation of existing grade separation structures;
 - construction of new grade separations costing less than \$1,000,000;
 - upgrading control circuitry;
 - installation of cantilevered signals due to the widening of the roadway;
 - the construction of connector roads where crossing closures are involved;
 - improvement, reconstruction, relocation, or realignment of the highway approaches at any existing public grade crossing; and/or
 - improvement, reconstruction, relocation, or removal of track structures and railroad appurtenances that may be in the interest of public safety at an existing public grade crossing.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-7(6)

Jan 2005

In any condition where the party desiring the crossing improvements is unsure which procedure to use, contact the ICC for a determination.

5-7.06(d) Petition Procedures

If the local agency can reach agreement with the railroad concerning the type of warning device needed and the division of cost for an existing crossing, it may not be necessary to hold a formal hearing before the ICC. If the local agency cannot reach an agreement with the railroad, a formal hearing must be held before the ICC. Either the local agency or the railroad may submit a petition requesting a hearing to the ICC. Application forms are available from the ICC. The petition should state the location of the crossing(s) involved, the improvements desired (including the reasons why the improvements are necessary), and that amount of financial assistance requested, if applicable. When filing a petition with the ICC, also provide a copy of the petition to the railroad or local agency, and IDOT.

Upon receipt and review of the petition, the ICC will send out a notice of the date, time, and place of the hearing to all parties involved. The hearings are conducted in a manner similar to that of a court trial, but on a more informal basis. During the course of the hearing, each party will have the opportunity to express their concerns regarding the proposed safety improvement.

The petitioner should present all pertinent information relative to the physical characteristics of the highway and approaches near the crossing and surrounding area. In addition, data should be presented depicting existing and projected vehicular traffic on the crossing. The petitioner should present evidence showing why the improvements are needed. Information regarding the roadway work should be presented if there will be a highway project in connection with the crossing improvement.

Typically, the railroad company involved will have a representative present who can testify with regard to train traffic and the estimated cost of warning devices and/or crossing surface work. However, it is advised that the local agency have some knowledge of this information prior to the hearing. While it is not required, the parties may choose to have an attorney present to provide assistance at the hearing.

The ICC issues an order based on findings made from evidence presented at the hearing. The order includes a description of the work to be performed, the parties responsible for ensuring that the work is performed, the division of cost between affected parties, and the date by which all work should be completed.

In contested cases, the ICC issues a proposed order where all affected parties are given an opportunity to comment within a specified time frame, usually 2 weeks, before the final order is used.

5-7.06(e) Stipulated Agreement Procedures

Generally, the local agency initiates the stipulated agreement procedure by contacting the ICC in writing or by phone and requesting that a meeting be scheduled. However, a railroad or IDOT may also request a meeting. Because the nature of the proposed crossing improvements may vary considerably, the ICC contacts each affected party regarding the necessary preparation prior to the meeting.

On the date and time mutually agreed upon, all affected parties meet at the site and discuss the crossing needs and possible solutions. Should it be determined at the meeting that the project meets the minimum warrants under the ICC's stipulated agreement procedures and all parties are in agreement with the improvements and division of cost, the ICC will prepare a stipulated agreement for signature by all parties; see Section 5-7.06(c). Prior to the circulation of a stipulated agreement, all necessary cost estimates (e.g., signals, surfaces, approaches, bridge construction) must be submitted to the ICC. After all parties execute the stipulated agreement, the ICC will issue an order for completion of work.

If the proposed project does not satisfy the requirements for a stipulated agreement or there is disagreement among the parties regarding the proposed work or division of cost, any affected party (i.e., local agency, railroad, IDOT) may petition the ICC for a hearing; see Section 10-2.01(f).

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-7(8)

Jan 2005

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5-8 UTILITY AGREEMENTS

5-8.01 Requirements for Utility Agreements

A utility agreement is required when a proposed highway improvement requires relocation or adjustment of an existing utility and existing permits do not provide for moving the utility. Typically, these are projects that affect utilities located outside the existing highway right-of-way.

5-8.02 Agreement Format

When a project requires a utility agreement, the local agency is normally responsible for its preparation and execution in consultation with the district. Each utility agreement must specify the responsibilities of each party and contain the following items plus any additional items applicable to the project:

1. Identify the utility name, local agency name, and MFT section number, if applicable. For Federal-aid projects, also identify the project and job number.
2. Include a description of the work to be done.
3. Provide a location description and location map.
4. For projects with Federal funds, include a statement that the project is subject to FHWA requirements.
5. Identify who is responsible for the surveys, plan preparation, specifications, and estimates.
6. Identify which agency is responsible for letting and awarding the contract and who will provide construction supervision of the work.
7. Identify the selected method of construction (e.g., State- or local-let contract, utility forces, contract by utility company).
8. Note if concurrence in the award of the contract is required.
9. Provide a division of cost showing funding responsibilities and the type of funds being used.
10. Identify the method of payment and/or reimbursement by each party.
11. Note the local agency appropriation for their share of the cost.
12. For Federally funded projects, include any statements regarding DBEs. Note the DBE program being followed by the local agency if it is a locally let contract.

BUREAU OF LOCAL ROADS & STREETS

5-8(2)

AGREEMENTS

Jan 2006

13. Note who is responsible for the retention of records for inspections, audits, etc. The utility company must retain records for 3 years following completion of work.
14. Identify the proposed completion date of the project.
15. Provide provisions in the agreement to allow termination of the project.
16. Include a statement that IDOT will audit utility bills for work performed by utility forces in accordance with FHWA requirements on all projects involving the use of State or Federal funds.

5-8.03 Preparation and Execution

The draft agreement is circulated among the affected parties, including the district, for corrections/comments. Once corrected, the agreement is executed by the local agency and the utility company.

Upon review of the draft agreement by the district, the local agency arranges with the utility company to have an estimate of cost and plans submitted to the district for approval prior to execution of the agreement.

The agreement is signed by the authorized local agency and utility company representative. Normally, the local agency representative is the chairman of the county board, highway commissioner, mayor, or village president. In the case of a county or municipality, if another local official signs the agreement, the official must be authorized to do so by resolution of the county board, city council, or village board. The utility representative who signs the agreement is usually the company president, general manager, or chief engineer. The agreement must be approved by the district.

Federal participation in the relocation or removal cost of a utility, required by a highway project, may be secured by following the Federal procedures for project authorization/obligation of funds and obtaining the district's approval of the agreement and PS&E prior to the beginning of utility work. If the utilities are located on the public right-of-way, the associated cost for relocation or removal must be borne by the utility company.

For additional guidance on coordinating with utility companies, see Section 10-4.

5-9 MAINTENANCE AGREEMENTS FOR STATE HIGHWAYS

5-9.01 Traffic Signal Master Agreements

For most traffic signals on State highways, the districts will select local contractors to provide maintenance. However, in some cases, municipalities may perform the signal maintenance work that is the State's responsibility under the terms of a master agreement. Local agencies are reimbursed by the State for maintenance and/or energy costs associated with the signals.

The Traffic Signal Master Agreement is prepared by the district Bureau of Operations. The agreement should:

- Identify the location of each traffic signal.
- Indicate the level of maintenance that should be provided.
- Identify the party that will be responsible for the maintenance costs and energy costs. If the cost is shared between the parties, indicate the portion of the cost for which each agency is responsible.
- Indicate whether the local agency will maintain the traffic signal through the use of its own forces or through an ongoing contractual agreement with a local contractor.

The agreement is signed by the local agency and IDOT.

For additional guidance on master agreements, see the IDOT Bureau of Operation's *Policy and Procedures Manual*. The Bureau of Operations' *Policies and Procedures Manual* also includes a sample master agreement and common amendments to the agreement.

5-9.02 Maintenance Agreements

IDOT is authorized to enter into contracts with any municipal corporation to maintain any State highway located within the municipal corporation (605 ILCS 5/4-406). The agreement will provide for a minimum level of maintenance, a discussion of the route included, and the amount of reimbursement for the local agency.

5-10 TACO AGREEMENTS

Illinois environmental law requires the Illinois Pollution Control Board to consider land use controls in determining risk to human health from contamination in soil and groundwater. This approach is known as the Tiered-Approach to Corrective Action Objectives, or "TACO." As a result of IDOT's effort, IDOT has developed Highway Authority Agreements, which are the land use controls recognized in TACO. See Section 20-12.09 for TACO Agreements. In the agreement, IDOT or a local highway authority is responsible, depending on who signs the agreement, for the following commitments:

- The agency will not allow drinking water wells to tap groundwater in the area of the right-of-way that may be contaminated.
- If soil in the right-of-way that may be contaminated is excavated, human health and the environment will be protected.

For a highway authority willing to make these commitments, there are a number of significant benefits. These include:

1. Notification. A company is required to notify the agency that it has contaminated the right-of-way and will take responsibility. These agreements could cover nearly any type of pollutant.
2. Release. The company gives the agency a legal release from liability and indemnifies the agency for claims that may be made.
3. Reimbursement. Should the local agency excavate through contaminated soil in the right-of-way (e.g., release of petroleum), the company will reimburse the local agency's costs of dealing with the contamination (e.g., cost of disposing of the contaminated soil in a landfill).

A company that has contaminated the right-of-way has two choices:

- it can clean up the right-of-way, or
- it can negotiate a Highway Authority Agreement that is acceptable to the local agency.

The first choice is expensive and an unnecessary drain on the Leaking Underground Storage Tank Fund. This fund reimburses owners for their cleanup costs of those tanks. Money for this fund comes from tax on motor fuel sold at the pump, similar to the Motor Fuel Tax. It is typically unnecessary because the cleanup is not needed to protect human health and the environment. However, the local agency still must meet its commitments made in the Highway Authority Agreement.

